

September 2000 PECFA Program Deductible

After the last budget bill was finalized, most of the calls and comments received from PECFA claimants were about the changes that had been made in interest reimbursement. The focus at that time was clearly on what loans would be reimbursed at one percent under prime or four percent and which ones would stay at the higher traditional reimbursement rate.

In the time period that has elapsed since the passage of the budget bill other topics, arising from the budget, have generated questions and comments. We have been surprised, however, on the relatively limited level of discussion and questions generated by one high impact provision of the budget - the change in program deductible for underground tank systems. Only recently have we started to get some questions regarding this provision and how it impacts remediation efforts.

The budget bill stated that the new deductible for claimants, other than school or technical college districts (which remained at 25%), would become \$2,500 plus 5% of eligible costs. The budget bill further stated that the new deductible would first apply to "a person who submits a remedial action plan, that is acceptable to the department of commerce or the department of natural resources, on (or after) November 1, 1999". From a plain language standpoint, the new deductible provision simply says that if a claimant has not submitted a remedial action plan before November 1, 1999, that ultimately obtains program approval, they will be charged the new deductible when reimbursement claims are filed with the program.

The lack of questions that PECFA has received on this provision could be attributed to a number of different possibilities:

- Claimants and consultants may be working primarily with sites that have remedial alternatives, which were approved, and predate the November 1, 1999 transition point;
- Sites which will fall under the new deductible may still only be in the investigation phase; or
- The new provision is understood and adjustments are taking place in the financial lending field to reflect the new deductible.

From the smattering of questions we have fielded, it appears that number 3 is not our most likely answer. It is perhaps more likely that claimants, consultants and others have not yet thought through the potential impact of the new deductible. If this is the case, this may be a good time to provide some observations and comments regarding the application of the provision. Specifically:

1. To the extent that "Grandfathering" exists, it is in the context of sites that submitted a remedial action plan before the November 1, 1999 date and received approval. Even if a site was in investigation for an extended period of time or performed a level of emergency or interim work, the determination of deductible is based upon when an approvable remedial alternative was submitted.

2. The \$2,500 plus 5% of eligible costs does not top out at \$7,500. The 5% add on extends all the way to the coverage maximum and this may result in a significant deductible increase for claimants.
3. The higher deductible is applied to all costs and does not just apply to remediation costs (or costs after a remedial plan approval). If a site falls under the new provision, the new rate will be applied against investigation, remediation and any other PECFA eligible costs.

In creating the higher level deductible, the legislature was working to create more claimant interest in controlling the remediation process. At the \$100,000 expenditure level, the new and old deductibles are essentially equal. Given the success of the competitive bidding process and the under 60K remediations, a large number of claimants will never notice (or be impacted by) the change in deductible. There are, however, a continuing string of high cost sites that will go well beyond the \$100,000 level. For claimants with these sites, understanding and being prepared to work with the new deductible will be an important step in their remediation process.